

Categorical Exclusion Determination and Decision Record for Assignment RIGHT-OF-WAY UNDER TITLE V OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT (CASE No. OR 49136 FD – Christiansen and Case No. OR 49143 FD - Christiansen)

CE# OR115-08-11

Description of Proposed Action

The proposed action is the issuance of two right-of-way grants across the same segment of road to Dennis W. Christiansen, under the provisions of 43 CFR Part 2800, and Title V, P.L. 94-579; 90 Stat 2743. The proposed grants will provide access to two separate privately-held parcels. These assignments are of previous rights-of-way and the term is perpetual. The rights-of-way were granted in exchange for an easement and all fees have been waived. These have been assigned serialized case No. OR 49136 FD and OR 49143 FD.

The uses to be authorized include: Rights of ingress, egress and maintenance of existing BLM road 36-04-01 from the north boundary of the NW/SE, section 1 to the north boundary of the NW/NE section 1.

Plan Conformance Review

This proposal was not scoped and the public was not involved in its development. This proposal is consistent with policy directed by the following:

- *Final Supplemental Environmental Impact Statement and Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (Northwest Forest Plan FSEIS, 1994 and ROD, 1994);
- *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement and Record of Decision* (EIS, 1994 and RMP/ROD, 1995);
- *Record of Decision To Remove the Survey and Manage Mitigation Measure Standards and Guidelines from the Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* (USDI 2007);
- *Medford District Integrated Weed Management Plan Environmental Assessment* (1998) and tiered to the *Northwest Area Noxious Weed Control Program* (EIS, 1985)

The proposed action is in conformance with the direction given for the management of public lands in the Medford District by the Oregon and California Lands Act of 1937, Federal Land Policy and Management Act of 1976, Endangered Species Act of 1973, Clean Water Act of 1987, Safe Drinking Water Act of 1974 (as amended 1986 and 1996), Clean Air Act of 1990 (as amended), and Archaeological Resources Protection Act of 1979.

This proposal is consistent with management direction in the Medford District Resource Management Plan that directs the BLM to “Continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance areas identified in this RMP” (USDI 1995, p. 82).

Project Design Features

The proposed right-of-way project design features must conform to those delineated on the attached Exhibit B.

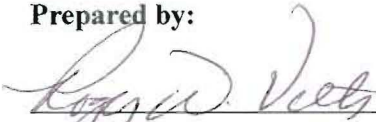
Categorical Exclusion Determination

This proposed action qualifies as a categorical exclusion as provided in United States Department of the Interior Departmental Manual 516 DM 11.9 E(16). This section allows for "issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes."

Before any action described in the list of categorical exclusions may be used, the "extraordinary circumstances," included in 516 DM 2, Appendix 2, must be reviewed for applicability (See attached review). After review, the BLM determined no extraordinary circumstances exist that would cause the proposed action to have a significant environmental effect. The action will not require additional analysis.

Contact Person

For additional information concerning this project, contact Roger Viets, Project Leader, at (541) 618-2221.

Prepared by:

Roger Viets
Medford District, Staff Supervisor
Lands and Realty

4/24/08
Date

NEPA Compliance:

Jean Williams, Environmental Specialist
Butte Falls Resource Area

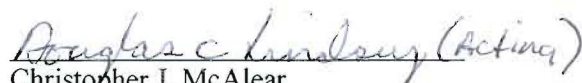
4/24/08
Date

Decision

It is my decision to authorize right-of-way grants No. OR 49143 FD and OR 49136 FD, for ingress and egress on BLM road 36-04-01 as described in the Proposed Action. The project is planned for implementation in spring of 2008.

Decision Rationale

The proposed action has been reviewed by the Butte Falls Resource Area staff and appropriate Project Design Features, as specified above, will be incorporated into the proposal. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the environment and no further environmental analysis is required.

for 

Christopher J. McAlear
Field Manager
Butte Falls Resource Area

04/24/2008
Date

ADMINISTRATIVE REMEDIES

In accordance with BLM's Rights of Way regulations (See 43 CFR § 2801.10), administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized would cause injury, and who have established themselves as a "party to the case" (See 43 CFR § 4.410). Other than the applicant for the right-of-way, in order to be considered a "party to the case" the person claiming to be adversely affected by the decision must show that they have notified the BLM of their alleged injury through their participation in the decision-making process [See 43 CFR § 4.410(b) and (c)]. The latest date that any affected parties received the Notice of Decision will establish the date initiating a 30 day appeal period.

EFFECTIVE DATE OF DECISION

This is a land decision on a right-of-way application. **All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal** (See 43 CFR § 2801.10) unless the Secretary rules otherwise. Rights-of-Way decisions that remain in effect pending an appeal are considered as "in full force and effective immediately" upon issuance of a decision. Thus, this decision is now in effect.

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a "party to the case" (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after publication of this decision on the Medford district website. Only signed hard copies of a notice of appeal that are delivered to the Medford District Office (3040 Biddle Road, Medford, OR 97504) will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a "party to the case," you also have the burden of showing possession of a "legally cognizable interest" that has a substantial likelihood of injury from the decision [See 43 CFR § 4.410(d)]. Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed [See 43 CFR § 4.410(c)].

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor and Dennis W. Christiansen at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

HOW TO FILE AN APPEAL

The instructions for properly filing an appeal are contained in the attached form 1842-1.

CONTACT INFORMATION

For additional information contact Christopher McAlear, Butte Falls Field Manager, 3040 Biddle Road, Medford, OR, 97504; (541) 618-2385. Additional contact addresses include:

- U.S. Department of the Interior
Office of Hearings and Appeals, Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, VA 22203
- Regional Solicitor
Pacific Northwest Region, U.S. Department of the Interior
500 N.E. Multnomah Street, Suite 607
Portland, OR 97232
- Dennis W. Christiansen
PO Box 1426
Rogue River, OR 97525

April 14, 2008

NEPA Categorical Exclusion Review

Proposed Action: The proposed action is the issuance of two right-of-way grants across the same segment of road to Dennis W. Christiansen, under the provisions of 43 CFR Part 2800, and Title V, P.L. 94-579; 90 Stat 2743. The proposed grants will provide access to two separate privately held parcels. These assignments are of previous rights-of-way and the term is perpetual. The rights-of-way were granted in exchange for an easement and all fees have been waived.

Department of the Interior Manual 516 DM 2, Appendix 2 provides for a review of the following criteria for categorical exclusion to determine if exceptions apply to the proposed action based on actions which may:

1. *Have significant impacts on public health or safety.*

☐ Yes ☒ No

Initial *QR* Remarks:

2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resource; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.*

☐ Yes ☒ No

Initial *QR* Remarks:

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].*

☐ Yes ☒ No

Initial *QR* Remarks:

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.*

☐ Yes ☒ No

Initial *QR* Remarks:

5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

☐ Yes ☒ No

Initial *QR* Remarks:

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

☐ Yes ☒ No

Initial *GS* Remarks:

7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.*

☐ Yes ☒ No

Initial () Remarks:

April 14, 2008

8. *Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.*

Plants ☐ Yes ☒ No Initial (mw) Remarks:

Animals ☐ Yes ☒ No Initial (mw) Remarks:

Fish ☐ Yes ☒ No Initial (JZ) Remarks:

9. *Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.*

☐ Yes ☒ No

Initial () Remarks:

10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

☐ Yes ☒ No

Initial (mw) Remarks:

11. *Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).*

☐ Yes ☒ No

Initial () Remarks:

12. *Contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).*

☐ Yes ☒ No

Initial (mw) Remarks:

April 14, 2008

Reviewers: Butte Falls Resource Area

Name	Title	Date	Initials
Jean Williams	NEPA Coordinator	4/24/08	JW
Marcia Wineteer	Botanist	4/14/08	mw
Dave Roelofs	Wildlife Biologist	4/14/08	DR
Steve Liebhardt	Fisheries Biologist	4/14/08	SL
Ken Van Etten	Soil	4/15/08	KBV
Shawn Simpson	Hydrology	4/15/08	SLS
Trish Lindaman	Visual Resources/Recreation	4/14/08	PAL
Leanne Mruzik	Fire/Fuels Specialist	4/25/08	LM
Randy Bryan	Engineering	4/22/08	RRB
John McNeel	Cultural Resources	4/22/08	Jm

Exhibit A
Christiansen Right-of-Way Application
OR 049143 FD/OR 049136FD

T36S – R4W Sec 1
Rd. 36-04-01, NE1/4

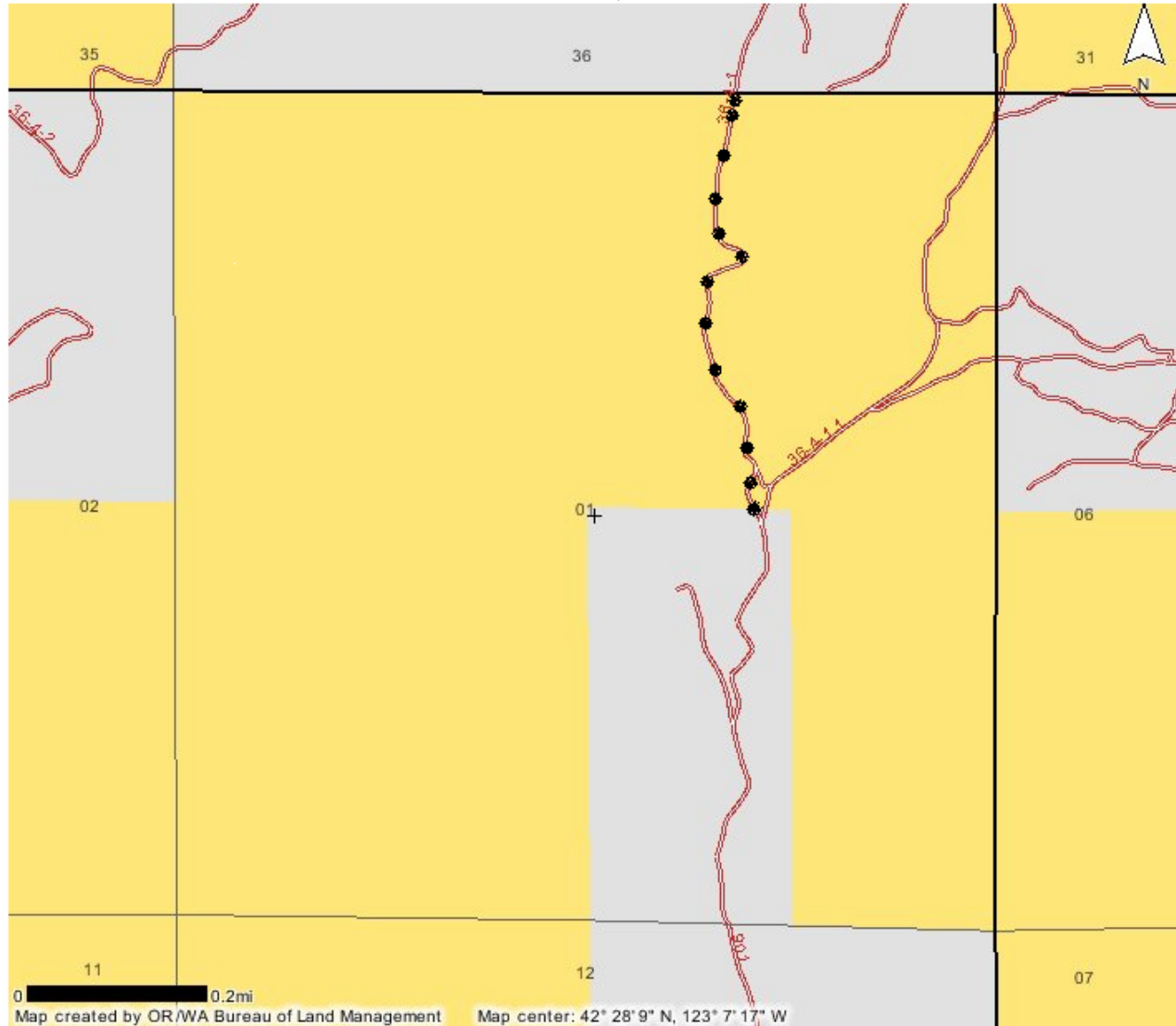


EXHIBIT B

Project Design Features

- 1) Be prepared to conduct all maintenance concerning the use of this authorization at the Holder's cost in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- 2) Notify the Authorized Officer of his intended use of any mechanized equipment for the maintenance authorized through this grant fourteen (14) days prior to its intended use, the date it is to commence, and the delegated representative of the Holder. Such delegated representative is the person who is authorized by the Holder to carry out the terms and conditions of the grant and act on behalf of the Holder. The notice of the delegated representative shall include a current mailing address and telephone number.
- 3) Contact and receive either a permit or notification from the Oregon Department of Forestry prior to use of mechanized equipment in the maintenance and repair of this right-of-way grant. The Holder and/or his contractor shall comply with all Oregon Department of Forestry and BLM fire restrictions.
- 4) Immediately stop all operations and notify the BLM upon becoming aware of, encountering, or discovery of any cultural, historical or pre-historic value within the right-of-way.
- 5) Comply with all applicable State and Federal environmental laws, regulations, and standards. The Holder shall also immediately discontinue all construction or other operations under this grant upon receipt of written notice from the Authorized Officer that such operations are in violation of said provisions.
- 6) All ground disturbing equipment used on BLM lands must be washed prior to entering BLM lands to remove any dirt or vegetation that may harbor noxious weed seeds.
- 7) Notify the Authorized Officer upon discovery of any noxious weed species found on the right-of-way area. The Holder is responsible for immediate control and eradication. The Holder shall consult with, and obtain written approval from, the Authorized Officer for acceptable weed control methods, such as mechanical or chemical, or provide funds to BLM for treatment.
- 8) Not use dirt roads as access routes when such use would cause severe rutting or erosion, as determined by the Authorized Officer. Use, maintenance, and repair activities shall be suspended on public lands if soil condition warrants, as determined by the Authorized Officer. The Holder shall repair any environmental damage resulting from activities associated with this authorization to the satisfaction of the BLM Authorized Officer.
- 9) Undertake every reasonable measure to minimize erosion to the roads and surrounding areas, soil disturbances and turbidity to waterways, ground disturbing activity, or the introduction of invasive plants.
- 10) Promptly remove and dispose of all waste caused by their activities. The term "waste" as used herein means all discarded matter including, but not limited to human waste, trash, garbage, refuse, petroleum products, ashes, equipment, and vegetative materials.
- 11) Not place signs, gates, or barricades on public land, its resources or improvements without prior written approval from the Authorized Officer.

- 12) Protect all survey monuments, witness corners, reference monuments, and bearing trees within this right-of-way against disturbance during construction, operation, maintenance, and rehabilitation. If any monuments, corners, or accessories are destroyed, obliterated, or damaged, the Holder or his contractor shall restore said items to the satisfaction of the BLM Authorized Officer.
- 13) Machinery and/or ground disturbing activity shall be restricted to inside the designated right-of-way by repair and maintenance equipment only. Work involving soil disturbance shall be performed in the dry season only, which is generally between May 15 and October 15 of any year. Heavy equipment operation and ground disturbing activities are prohibited when soil moisture content exceeds 25% by weight. All equipment shall be washed and inspected for leaks before entering BLM-administered lands.
- 14) No hazardous materials are to be produced, transported, or stored on this right-of-way. The Holder shall notify the Authorized Officer if there is a significant variance from this authorization with respect to hazardous materials and their use, storage, or disposal. The Environmental Protection Agency maintains and updates a list of all hazardous substances that may present substantial danger to the public health or the environment in Title 40 of the United States Code of Federal Regulations Part 302.
- 15) No pesticides (i.e. insecticides, herbicides, fungicides, rodenticides and other similar substances) shall be applied to the grant area unless the Holder has written approval from the Authorized Officer.
- 16) Natural vegetation shall be cleared or trimmed only when necessary to provide suitable access for operation, maintenance and repair of the system. No tree eight inches (8") in diameter or over at breast height shall be cut without prior written approval from the BLM Authorized Officer during the exercise of the rights granted herein.
- 17) Assignment of this grant to subsequent owners of the property is not automatic. A formal assignment decision must be authorized by BLM. Contact the BLM Authorized Officer, Medford, Oregon for information regarding the process.
- 18) The United States reserves the right to grant subsequent use pursuant to 43 CFR 2801.1-1.
- 19) The right-of-way Holder is aware that BLM-administered lands in western Oregon are managed in part for timber resource activities which include timber harvesting, reforestation, and tree release programs. BLM forest management activities may also include application of herbicides, firewood cutting, and prescribed burning. Logging operations cause dust and noise. Many of these activities are considered objectionable by residents living on adjacent private lands. BLM roads will be used to haul timber. Other important resources of these lands include wildlife habitat, minerals, soil and water quality, recreation opportunities, and others. The Holder should also be aware that the BLM may grant other rights-of-way across BLM lands, and also may enter into agreements for exchange or sale of BLM administered lands.
- 20) The United States shall not be held liable for any damage to the right-of-way caused by the general public or as a result of fire, wind, or other natural disasters or as a result of silviculture practices, timber harvesting operations, or other actions stemming from the land management activities of the Bureau of Land Management. The Holder shall be responsible for costs incurred for reconfiguration of Holder improvements within the right-of-way when BLM activities are required.